

**Introduced by Senator Burton**January 26, 2004

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An act to add Article 2.5 (commencing with Section 14440) to Chapter 3 of Division 6 of the Business and Professions Code, relating to lenders.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1150, as introduced, Burton. Lender names and trademarks.

Existing law, the Trademark Law, provides for the registration of a trademark with the Secretary of State. Under existing law, the owner of a registered mark may bring a civil action for the unauthorized use of the mark.

This bill would prohibit the use of or reference to, the trade name or trademark of a lender, as defined, or to one similar to that of the lender, subject to specified exceptions. The bill would also prohibit the use of or reference to, loan information of a consumer in a solicitation for services or products, subject to specified exceptions. The bill would authorize injunctive relief for a violation of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 2.5 (commencing with Section 14440)
- 2 is added to Chapter 3 of Division 6 of the Business and Professions
- 3 Code, to read:
- 4



## Article 2.5. Lender Names And Trademarks

14440. “Lender” as used in this article, includes a bank, savings and loan association, savings bank, credit union, or other lender licensed to make loans in California or a subsidiary or an affiliate of one of those entities.

14441. (a) No person shall use or reference the trade name or trademark of a lender or a trade name or trademark similar to that of a lender in a solicitation for services or products without the consent of the lender, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. This statement shall be printed in close proximity to the trade name or trademark in the same or larger font size, if printed, each time the trade name or trademark appears in the solicitation, including on an envelope or through an envelope window containing the solicitation.

(b) No person shall use the trade name or trademark of a lender or a trade name or trademark similar to that of a lender in an advertisement or solicitation for services or products if that use could cause a reasonable person to be confused, mistaken, or deceived initially or otherwise as to either of the following:

(1) The sponsorship, affiliation, connection, or association of the person using the trade name or trademark with the lender.

(2) The lender’s approval of the person using the trade name or trademark.

14442. No person shall use or reference a consumer’s loan number, loan amount, or other specific loan information, whether or not publicly available, in a solicitation for services or products without the consent of the lender, unless the solicitation clearly and conspicuously states that the person is not sponsored by or affiliated with the lender and that the solicitation is not authorized by the lender, which shall be identified by name. This statement shall be printed in close proximity to the loan information in the same or larger font size, if printed, each time the loan information appears in the solicitation including on an envelope or through an envelope window containing the solicitation.

14443. It is not a violation of this article for a lender in an advertisement or solicitation for services or products to use the

1 trade name of another lender in connection with a comparison of  
2 services or products offered by the other lender.

3 14444. (a) A person who violates Section 14441 or 14442  
4 shall be subject to an injunction against that use by the lender or  
5 other person who owns the trade name or trademark of the lender.  
6 It is not necessary in this action to allege or to prove actual damage  
7 to the plaintiff, and irreparable harm and interim harm to the  
8 plaintiff shall be presumed. In addition to injunctive relief, the  
9 plaintiff is entitled to recover in the action the amount of the actual  
10 damages, if any, it sustained and any profits of the defendant that  
11 are attributable to the violation of Section 14441 or 14442 that are  
12 not taken into account in computing the actual damages.

13 (b) The prevailing party in the action is entitled to recover its  
14 costs and reasonable attorney's fees from the other party.

